

## PART 9—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF THE INTERIOR PROGRAMS AND ACTIVITIES

Sec.

- 9.1 What is the purpose of these regulations?
- 9.2 What definitions apply to these regulations?
- 9.3 What programs and activities of the Department are subject to these regulations?
- 9.4 [Reserved]
- 9.5 What is the Secretary's obligation with respect to Federal interagency coordination?
- 9.6 What procedures apply to the selection of programs and activities under these regulations?
- 9.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?
- 9.8 How does the Secretary provide states an opportunity to comment on proposed federal financial assistance and direct federal development?
- 9.9 How does the Secretary receive and respond to comments?
- 9.10 How does the Secretary make efforts to accommodate intergovernmental concerns?
- 9.11 What are the Secretary's obligations in interstate situations?
- 9.12 How may a state simplify, consolidate, or substitute federally required state plans?
- 9.13 May the Secretary waive any provision of these regulations?

AUTHORITY: E.O. 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); and sec. 401 of the Intergovernmental Cooperation Act of 1968 as amended (31 U.S.C. 6506).

SOURCE: 48 FR 29232, June 24, 1983, unless otherwise noted.

### § 9.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state,

areawide, regional and local coordination for review of proposed federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

### § 9.2 What definitions apply to these regulations?

*Department* means the U.S. Department of the Interior.

*Order* means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

*Secretary* means the Secretary of the U.S. Department of the Interior or an official or employee of the Department acting for the Secretary under a delegation of authority.

*State* means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

### § 9.3 What programs and activities of the Department are subject to these regulations?

(a) The Secretary publishes in the FEDERAL REGISTER a list of the Department's programs and activities that are subject to these regulations and a list of programs and activities that have existing consultation processes.

(b) With respect to programs and activities that a state chooses to cover, and that have existing consultation processes, the state must agree to adopt those existing processes.

### § 9.4 [Reserved]

### § 9.5 What is the Secretary's obligation with respect to Federal interagency coordination?

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

## §9.6

### **§9.6 What procedures apply to the selection of programs and activities under these regulations?**

(a) A state may select any program or activity published in the FEDERAL REGISTER in accordance with §9.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Secretary of the Department's programs and activities selected for that process.

(c) A state may notify the Secretary of changes in its selections at any time. For each change, the state shall submit to the Secretary an assurance that the state has consulted with local elected officials regarding the change. The Department may establish deadlines by which states are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a state's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

### **§9.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?**

(a) For those programs and activities covered by a state process under §9.6, the Secretary, to the extent permitted by law:

(1) Uses the state process to determine views of state and local elected officials; and,

(2) Communicates with state and local elected officials, through the state process, as early in a program planning cycle as in reasonably feasible to explain specific plans and actions.

(b) The Secretary provides notice to directly affected state, areawide, regional, and local entities in a state of proposed federal financial assistance or direct federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process.

## 43 CFR Subtitle A (10–1–07 Edition)

This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which the Department in its discretion deems appropriate.

### **§9.8 How does the Secretary provide states an opportunity to comment on proposed federal financial assistance and direct federal development?**

(a) Except in unusual circumstances, the Secretary gives state processes or directly affected state, areawide, regional and local officials and entities:

(1) At least 30 days from the date established by the Secretary to comment on proposed federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Secretary to comment on proposed direct federal development or federal financial assistance other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

### **§9.9 How does the Secretary receive and respond to comments?**

(a) The Secretary follows the procedures in §9.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under §9.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

## Office of the Secretary, Interior

## § 9.12

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Department by a single point of contact, the Secretary follows the procedures of § 9.10 of this part.

(e) The Secretary considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 9.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the Department by a commenting party.

### **§ 9.10 How does the Secretary make efforts to accommodate intergovernmental concerns?**

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:

- (1) Accepts the recommendation;
- (2) Reaches a mutually agreeable solution with the state process; or
- (3) Provides the single point of contact with such written explanation of the decision, as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of the section, the Secretary informs the single point of contact that:

- (1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or
- (2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received writ-

ten notification 5 days after the date of mailing of such notification.

### **§ 9.11 What are the Secretary's obligations in interstate situations?**

(a) The Secretary is responsible for:

(1) Identifying proposed federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity;

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to § 9.10 of this part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 9.10 if a state process provides a state process recommendation to the Department through a single point of contact.

### **§ 9.12 How may a state simplify, consolidate, or substitute federally required state plans?**

(a) As used in this section:

(1) *Simplify* means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) *Consolidate* means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) *Substitute* means that a state may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute Federally required state plans without prior approval by the Secretary.

## § 9.13

(c) The Secretary reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet Federal requirements.

### § 9.13 May the Secretary waive any provision of these regulations?

In an emergency, the Secretary may waive any provision of these regulations.

## PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

### Subpart A—Introduction

Sec.

10.1 Purpose and applicability.

10.2 Definitions

### Subpart B—Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony From Federal or Tribal Lands

10.3 Intentional archaeological excavations.

10.4 Inadvertent discoveries.

10.5 Consultation.

10.6 Custody.

10.7 Disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony. [Reserved]

### Subpart C—Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony in Museums and Federal Collections

10.8 Summaries.

10.9 Inventories.

10.10 Repatriation.

10.11 Disposition of culturally unidentified human remains. [Reserved]

10.12 Civil penalties.

10.13 Future applicability.

### Subpart D—General

10.14 Lineal descent and cultural affiliation.

10.15 Limitations and remedies.

10.16 Review committee.

10.17 Dispute resolution.

APPENDIX A TO PART 10—SAMPLE SUMMARY.

APPENDIX B TO PART 10—SAMPLE NOTICE OF INVENTORY COMPLETION.

AUTHORITY: 25 U.S.C. 3001 *et seq.*

SOURCE: 60 FR 62158, Dec. 4, 1995, unless otherwise noted.

## 43 CFR Subtitle A (10–1–07 Edition)

### Subpart A—Introduction

#### § 10.1 Purpose and applicability.

(a) *Purpose.* These regulations carry out provisions of the Native American Graves Protection and Repatriation Act of 1990 (Pub.L. 101–601; 25 U.S.C. 3001–3013; 104 Stat. 3048–3058). These regulations develop a systematic process for determining the rights of lineal descendants and Indian tribes and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated.

(b) *Applicability.* (1) These regulations pertain to the identification and appropriate disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are:

(i) In Federal possession or control; or

(ii) In the possession or control of any institution or State or local government receiving Federal funds; or

(iii) Excavated intentionally or discovered inadvertently on Federal or tribal lands.

(2) These regulations apply to human remains, funerary objects, sacred objects, or objects of cultural patrimony which are indigenous to Alaska, Hawaii, and the continental United States, but not to territories of the United States.

(3) Throughout these regulations are decision points which determine their applicability in particular circumstances, e.g., a decision as to whether a museum “controls” human remains and cultural objects within the meaning of the regulations, or, a decision as to whether an object is a “human remain,” “funerary object,” “sacred object,” or “object of cultural patrimony” within the meaning of the regulations. Any final determination making the Act or these regulations inapplicable is subject to review pursuant to section 15 of the Act.

[60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41293, Aug. 1, 1997]

#### § 10.2 Definitions.

In addition to the term *Act*, which means the Native American Graves